

REMARKS

Claim 1-17 are the claims currently pending in the Application.

Claims 1, 6, 9 and 14-17 are amended to clarify features recited thereby.

Formal Matters

The Examiner has not acknowledged the claim for foreign priority and the receipt of the priority document. Applicant respectfully requests that the Examiner so acknowledge.

Applicant thanks the Examiner for reviewing and considering the references cited in the Information Disclosure Statements filed on May 21, 2001 and April 7, 2004.

Rejection of Claim 9 under 35 U.S.C. § 112, Second Paragraph

Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claim 9 is amended. Therefore, this rejection should now be withdrawn.

Rejection of Claims 9 and 14-16 under 35 U.S.C. § 101

Claims 9 and 14-16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter on the ground that claims 9 and 14-16 are directed to subject matter that is not within the "technological arts." This rejection is traversed.

Based on present Federal Circuit case law, it is believed that the rejection of claims 9 and 14-16 under 35 U.S.C. § 101 is without merit and that the claims are

allowable in their present form with respect to the type of subject matter presented.

However, in the interest of expediting prosecution of the Application, claims 9 and 14-16 are amended. Therefore, this rejection should now be withdrawn.

Rejection of Claims 1-17 under 35 U.S.C. § 102(e)

Claims 1-17 are rejected under 35 U.S.C. § 102(e) as being anticipated by Herz et al., U.S. Patent No. 6,571,279. This rejection is traversed.

Among the problems recognized and solved by Applicant's claimed invention is that of a consumer, having ordered a product or service from a remote location, such as, for example, food in restaurant ordered via a network, having to wait upon arrival at the shop or the order sitting around at the shop before the consumer arrives.¹ According to an aspect of Applicant's claimed invention, a scheduled time of a consumer's arrival at the shop is calculated based on position data for the consumer.

For at least the following reasons, Applicant's claimed invention is neither anticipated by nor obvious from the cited prior art. By way of example, independent claims 1, 9 and 17 require calculating a scheduled time of a consumer's arrival at a shop from/based on position data of the consumer.

Herz discloses a location enhanced information delivery system architecture that customized advertising information displayed to a recipient to optimize the match between information purveyors and the recipient (Herz, Abstract). Herz

¹ The present discussion explains illustrative aspects of Applicant's claimed invention. Applicant does not represent that every embodiment of Applicant's claimed invention necessarily embodies or performs the solutions herein discussed.

discloses that physical proximity can be used as an additional selection criterion for personalization (as a client filter) (Herz, column 26, lines 29-42); and, that a user near a vendor's store has the ability to pre-order groceries or other merchandise directly and then to pick up the pre-packaged grocery order at the time of arrival at the store.

Herz does not disclose or suggest calculating a scheduled time of a consumer's arrival at the shop. Since Herz does not disclose or suggest this feature, Herz is incapable of disclosing or suggesting making this calculation based on the position data of the consumer. Therefore, Herz does not disclose or suggest calculating a scheduled time of consumer's arrival at a shop from/based on position data of the consumer, as *inter alia* required by independent claims 1, 9 and 17.

Claims 2-8 depend from independent claims 1, and claims 10-16 depend from independent claims 9. Therefore, claims 2-8 and 10-16 incorporate novel and nonobvious features of their respective base claims, and are thus patentably distinguishable over prior art for at least the reasons that independent claims 1 and 9, respectively, are patentably distinguishable over the prior art. Accordingly, this rejection should now be withdrawn.

For at least the reasons set forth in the foregoing discussion, Applicant believes that the Application is now allowable, and respectfully requests that the Examiner reconsider the rejections and allow the Application. Should the Examiner have any questions regarding this Amendment, or regarding the Application generally, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



George Brieger
Registration No. 52,652

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343 Ext. 503

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